

**NEW HAMPSHIRE JUDICIAL COUNCIL  
CONTRACT FOR ATTORNEY SERVICES, STATE FISCAL YEAR 2016**

This Agreement is made and entered into by and between the State of New Hampshire (hereinafter "State"), acting through the Judicial Council (hereinafter "Council"), and the attorneys qualified to provide indigent-defense representation, (hereinafter "Contractor").

**Authority**

NHRSA 604-A:2-b authorizes the Council to contract with any qualified attorney to provide indigent defense representation when the Public Defender Program is unavailable.

**Notices and Law Firm's Designated Contact**

All notices required to be given by this Agreement shall be delivered to the following addresses:

To the State: N.H. Judicial Council	To the Contractor:	<b>X</b>
25 Capitol Street, Room 424		<b>X</b>
Concord, New Hampshire 03301		<b>X</b>

One attorney in each firm shall be responsible for overseeing cases assigned to the firm and for certifying all reports. The designated attorney for this agreement is **XXXXXXXXXXXXXXXXXXXX**

**Performance by Contractor**

**Term:** Contractor agrees to provide representation in appointed cases during the period beginning **July 1, 2015** and ending **June 30, 2016**. Contractor further agrees to complete to final disposition all units of representation undertaken pursuant to this Agreement.

**Number of Units:** Contractor will commence representation in **XXX** units of indigent defense services.

**Courts:** Such representation shall originate by assignment in the following courts:

<b>XX</b>	<b>XX</b>
<b>XX</b>	<b>XX</b>
<b>XX</b>	
<b>XX</b>	
<b>XX</b>	
<b>XX</b>	

**Price Limitations and Payment Schedule**

**Maximum:** The State agrees to pay Contractor a maximum of: **XXXXXXXX**.

**Payment Schedule** (check one):

☐ **"Pay-As-You-Go"** Contractor will be paid according to the number of units accepted each month.

☐ **"Monthly Pro Rata"** Beginning 7/15/15, Contractor will be paid in 12 installments of **XXXXX**

Additional units may be awarded in accordance with the guidelines set forth in Appendix C.

### **Compensation and Unit Administration**

1. The Judicial Council has established unit values for State Fiscal Year 2016 as follows:

Felony 1	8.3
Felony 2	2.75
Misdemeanor	1.00
Misdemeanor Appeal/Information in Superior Court	1.5
Juvenile Delinquency	1.00
Juvenile Review	0.33
Others	0.75
Specialty Court Appearance	0.25
Preparation of a Notice of Appeal	1.00
Habeas Corpus Petition in Superior Court	1.00
2. Compensation pursuant to this Agreement is for attorney services, secretarial and other office support staff regularly employed by the Contractor, office overhead, travel, and the cost of continuing legal education. Office overhead shall include, but not be limited to, rent, wages and benefits, office supplies, telephone, utilities and library materials.
3. Payment for "services other than counsel" under RSA 604-A:6 and for witness fees shall be obtained by petitioning the Court and not through this Agreement.
4. If Contractor is paid "monthly pro rata," monthly payments may be made before a pro rata number of Units has been assigned. If, however, the number of units assigned is less than 50% of the anticipated pro rata number of units in any period, the State may withhold or adjust payments. The final four monthly payments of the year, (March, April, May and June), may be withheld by the State pending final computation of the indigent defense units assigned during the term of the agreement.
5. When compensation paid under this Agreement exceeds the number of units actually assigned during the term and eventually completed to Final Disposition, the excess compensation shall be reimbursed to the State within 60 days after written notice from the Council that reimbursement is due.
6. When Contractor is appointed pursuant to this Agreement to represent an individual in a criminal case, Contractor shall not receive any fee or expense for representation of that individual in that case except as provided for under this Agreement.
7. When Contractor is privately retained by an individual in a criminal case, Contractor may not accept a court appointment at a later time to represent that individual in that case unless the court determines that such appointment is in the best interests of justice. If the criminal case arises from an appointment in a court set forth in Section 3, above, payment shall be the contract rate, not the assigned counsel rate.
8. If more than one defendant has been charged with the same offense(s), and one or more of these defendants qualifies for court-appointed counsel, Contractor shall represent one of the defendants who so qualifies unless he/she has been previously retained by one of the defendants.
9. The Judicial Council will not accept for payment any "new open case" which is not reported within 60 days of the date of the appointment.

10. In the event that the Contractor fails to submit a closed case card within 30 days of Final Disposition, or fails to comply with other record-keeping or reporting requirements established by the Council, any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.
11. In the event that the Contractor fails to complete a case to Final Disposition, other than in instances where continued representation would violate the New Hampshire Rules of Professional Conduct, or where the Contractor has been removed by the court, any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.
12. In the event Contractor withdraws from representation in a case prior to Final Disposition, under circumstances where continued representation would violate the New Hampshire Rules of Professional Conduct, Contractor shall be entitled to receive credit for representation in that case at the rate of one-half of the unit value that (s)he would otherwise have been entitled to receive. In instances where the discovery of such circumstances occurs late in the preparation of the case, and such discovery was unavoidably delayed, Contractor may request in writing that the Council waive this provision. A statement of the circumstances requiring withdrawal and the reasons why the delay in discovering those circumstances was unavoidable, shall be submitted in writing with any request for a waiver.
13. Upon being assigned to the maximum number of Units set forth in Section 3 above, Contractor shall immediately notify the Council that he/she is no longer available to accept court appointments pursuant to this Agreement. In the event that the maximum number of Units has been or is likely to be completed before the end of the Term, the Council may assign additional Units not to exceed 30% of the number of contract units, set forth above and the maximum payment will be increased accordingly. Additional units beyond 30% may be assigned only upon further written Agreement of the Council and Contractor.

#### **Law Practice Requirements**

14. If Contractor is a law firm, lawyers associated with the firm may provide indigent defense representation only after obtaining approval to do so from the Council. Unless an attorney associated with the firm obtains approval from the Council after the execution of this Agreement, only those attorneys who sign the Waiver section of this Agreement, (See Appendix A), are approved by the Council to provide representation under this Agreement.
15. No part of Contractor's performance under this Agreement may be assigned or subcontracted without the written consent of the Council. Students or attorneys engaging in apprentice practice under Supreme Court Rule 36 may not provide indigent defense services unless their work is conducted within the scope of a law school clinical program approved by the Council.
16. Contractor shall provide meeting space for clients convenient to the Contractor's designated courts.
17. Contractor shall make provision for prompt and effective communication with clients in cases undertaken pursuant to this contract. Such provision shall ensure that clients are able to have reasonable access to the Contractor by telephone from detention facilities.
18. Assignment to a case includes the obligation to provide representation in all criminal matters arising out of the factual transaction underlying the assigned case. Contractor is required to assist the client in matters which are related to the case, such as proceedings in which the client is required to testify as to factual matters related to the representation on the appointed case. Such representation is required when assistance is needed to protect the client's constitutional rights or when the results of such proceedings

will have a direct impact on the result of the appointed case.

19. Assignment to a case includes the obligation to prepare and submit a formal Notice of Appeal when the client indicates his or her intention to appeal a final decision. Credit will be awarded separately for the preparation of the Notice of Appeal without the need for a new court appointment.
20. Any attorney approved under this contract may not carry an indigent defense caseload which exceeds such workload guidelines as may be established by the Council from time to time during Contractor's representation in cases undertaken during the term of this Agreement.
21. The Council or its executive director may direct the Contractor to restrict or suspend acceptance of new matters under this contract in a particular time period if the Council determines that such limitation is necessary to protect the interests of Contractor's clients or is otherwise necessary to accomplish the purposes of the indigent defense system.
22. Contractor shall not seek appointment in cases when the Public Defender Program is available, unless specifically authorized by the Executive Director of the Judicial Council.
23. Subject to court orders to the contrary, Contractor shall seek appointment in the superior courts in cases assigned in the district court when those cases proceed to the superior court by appeal or indictment.
24. Contractor's representation of indigent defendants under this Agreement shall at all times comply with the Rules of Professional Conduct or any similar code of ethics to which attorneys may be subject.
25. In providing representation under this Agreement, Contractor shall at all times adhere to such performance standards as may be established by the Judicial Council during the time that representation is being provided pursuant to this Agreement.
26. During the term of this contract, Contractor will attend 10 hours of training in the area of criminal defense or trial practice provided by the Public Defender Program or other provider of continuing legal education approved by the New Hampshire Minimum Continuing Legal Education Board.

#### **Closing Cases and Representation following Disposition**

27. Appointment termination shall be subject to the automatic withdrawal rules contained in Circuit Court, District Division Rule 1.3(I)(3), Circuit Court Family Division Rule 3.11, and Superior Court Rule 14(e). No payment will be made for further representation absent a new appointment of counsel by the court. This termination of representation does not relieve any other ethical obligations under the Rules of Professional Conduct, particularly with regard to the filing of a notice of appeal.
28. If the disposition of a case includes a requirement that the defendant complete a certain act within a certain time, the contractor shall participate as counsel to include any further scheduled hearing.
29. During the term of this Agreement and all successor Agreements, Contractor shall remain responsible to participate as counsel in deferred sentence proceedings in accordance with Superior Court Rule 14 and District Court Rule 1.3 (I) (3) or any subsequent Circuit Court Rule or applicable Administrative Order of the courts.
30. If the client fails to appear and the client's whereabouts are unknown, the contractor should keep the case open for 30 days and, if there has been no contact from the client, the case should be closed and the contractor should file a notice of withdrawal.

### **Conflict Avoidance, Record Keeping and Reporting**

31. Upon assignment of a new client, Contractor will make reasonable and diligent efforts to obtain and review relevant court documents, investigative reports, and other discovery materials to determine if any potential conflicts of interest exist in the case. Record-keeping systems will be maintained which facilitate the early and efficient identification of conflicts.
32. Contractor shall maintain such records and submit the reports described in Appendix A and such other reports as may be prescribed from time to time by the Council and other agencies of the State of New Hampshire and permit reasonable inspection of such records and reports by the Council subject to the attorney/client privilege. If Contractor fails to comply with such requirements, the Council may suspend payments under this Agreement until the Contractor's reporting practices are in compliance with this Agreement. As provided elsewhere in the Agreement and its appendices, the final payment under this Agreement may be withheld if the Executive Director of the Council determines that the Contractor has failed to comply with reporting and record-keeping requirements.
33. At a minimum, substantive portions of the files of clients represented pursuant to this contract shall be retained for at least six years from the date of the last action taken on the case, (including submission of the closed case card), or on any matter related to the case, or beyond any applicable period of statutory limitations on actions, whichever is longer. If the Contractor intends to destroy or transfer custody of the files of clients represented pursuant to this contract, (other than to the clients themselves, in which case a copy of the materials provided must be made), Contractor shall notify the Judicial Council, in writing, at least 60 days prior to taking the action. These contract terms do not limit the Contractor's other legal and ethical obligations to preserve client property and retain client files.

### **Administrative Requirements**

34. Contractor agrees to carry professional liability insurance covering all services to be performed pursuant to this Agreement in an amount of not less than \$100,000 per claim and \$300,000 aggregate, and to provide to the Council a certificate of such insurance prior to the Commencement Date and to notify the Council immediately if such insurance is cancelled or expires during the Term for any reason. Certificates of insurance shall require the insurer to give the Council at least thirty days notice prior to cancellation, expiration or any other material change in the policy, and of any claim made pursuant to the policy. Termination of professional liability insurance during the Term shall be cause for immediate termination of this Agreement. In the event of termination of this Agreement under this Paragraph, Contractor shall reimburse the State for all fees paid and forfeit rights to payment for such matters.
35. If at any time Contractor ceases to be a member in good standing of the New Hampshire Bar Association, this Agreement terminates automatically. The Contractor shall notify the Judicial Council in writing immediately of any change in standing as a member of the New Hampshire Bar Association or any other Bar Association.
36. This Agreement may be terminated by either party without cause upon thirty days prior notice in writing. Should this Agreement be terminated pursuant to this Paragraph, Contractor agrees to complete all assigned cases to Final Disposition and submit closed case cards in accordance with Appendix A, unless such completion would violate the New Hampshire Rules of Professional Conduct or if the Council requests otherwise. If this Agreement is terminated, Contractor shall reimburse the State for any excess compensation.
37. Contractor shall notify the Council in writing at least sixty days prior to the expiration of the Term of

his/her intention to seek renewal of the Agreement. Nothing contained herein, however, shall be construed as entitling Contractor to such renewal.

38. This Agreement constitutes the entire understanding between the parties with respect to the subject matter. No amendments to this Agreement shall be effective unless in writing and signed by duly authorized representatives of both parties.
39. It is understood and agreed to by the parties that in the performance of this Agreement, Contractor is in all respects an independent Contractor and is neither an agent nor an employee of the State or the Council, and that Contractor and its employees and agents are not entitled to any benefits, worker's compensation, or emoluments by the State, beyond those called for herein.

IN WITNESS WHEREOF, we have subscribed our hands, as representatives of the parties hereto.

**For the Contractor:**

\_\_\_\_\_  
Contractor's printed name                      Contractor's signature                      Date

\_\_\_\_\_  
If a firm, title or capacity of signatory                      Law Firm Name

\_\_\_\_\_  
Witness's printed name                      Witness's signature                      Date

**For the Judicial Council:**

\_\_\_\_\_  
Nina C. Gardner                      Date                      Witness                      Date  
Chairperson, N.H. Judicial Council

Approved as to form and execution:

BY: \_\_\_\_\_  
Assistant Attorney General                      Date

## Appendix A – Reporting and Disclosure Requirements

Contractor shall provide to the Judicial Council a closed case card for each case undertaken pursuant to this Agreement in the form prescribed by the Council. Contractor must submit to the Council the closed case card for each closed case within 30 days of final disposition of the case.

As of the 15<sup>th</sup> day of each month following the initial assignment of the case, the contractor shall report the “new open” cases on their monthly case status report and shall provide that report to the Council, along with the “Notification of Eligibility/Assignment of Counsel Form” applicable for each new open case. This report is due on or before the 20<sup>th</sup> of each month. The report for the period June 15 through June 30 shall be submitted on or before the 10<sup>th</sup> of July.

It shall be the responsibility of the Contractor to notify the Judicial Council in writing within 7 days of receipt of notice that a complaint has been docketed by the Attorney Discipline Office. The Judicial Council shall have the authority to exercise its right to review and access such records in conjunction with the signed confidentiality waiver provisions below:

**Confidentiality Waiver:** By signing below, each attorney providing indigent-defense representation under this Agreement waives his or her right to confidentiality as it relates to this contract and authorize the release by the Attorney Discipline Office to the New Hampshire Judicial Council any and all information that the Attorney Discipline Office or the Committee on Professional Conduct may deem necessary or desirable in the promotion of the proper administration of justice. Attorneys approved as of the date of execution of this Agreement are listed below and must sign and date this waiver:

_____ Contractor's printed name	_____ Contractor's signature	_____ Date
_____ Approved attorney's printed name	_____ Approved attorney's signature	_____ Date
_____ Approved attorney's printed name	_____ Approved attorney's signature	_____ Date
_____ Approved attorney's printed name	_____ Approved attorney's signature	_____ Date
_____ Approved attorney's printed name	_____ Approved attorney's signature	_____ Date

## Appendix B – Case Definitions, Scope of Representation

### **“Indigent defense services”**

“Indigent defense services” shall include representation of indigent defendants in criminal cases; of juveniles charged as delinquent under RSA 169-B; and such other representation of indigents as is required by the New Hampshire and United States Constitutions. Representation under this Agreement shall not include services in abuse or neglect proceedings, as a Guardian Ad Litem, or in capital, first or second degree murder, manslaughter or negligent homicide cases. Except as otherwise set forth herein, performance of indigent defense services shall include representation of clients from the time of appointment until “final disposition” of the case and the submission of a closed case report.

### **“Final disposition”**

“Final disposition” shall mean the full disposition of all charges in a case, such as when the defendant enters a guilty or nolo or Alford plea or when the charges are tried to verdict, dismissed, or dropped. Under this definition the filing of notice of appeal to the Supreme Court occurs after final disposition and is counted as a separate “other.”

### **“Unit”**

For the purposes of this Agreement a “Unit” is the monetary basis for compensation received under this contract. A unit shall be equal to \$275.00 during the duration of this Agreement. The case types include felony I, felony II, bench misdemeanor, misdemeanor appeal, juvenile delinquency, and “other.”

### **“Case”**

A “case” for the purposes of this contract is defined as follows:

- A single charge; or,
- Multiple related charges that occur at the same time and place which are to be tried as one case regardless of the number of complaints; or,
- Multiple charges that involve the same type of offense over a proximate period of time which are to be tried as one case regardless of the number of complaints.

Charges against a single defendant, which are severed by order of the court, will be counted as two or more cases, depending upon the number of severances granted by the court.

Designation of a case as either a felony or a misdemeanor when there are multiple charges in the case is determined by the most serious charge in that case. A felony case is not finally disposed of until the felony charge in that case has been finally resolved. A probable cause hearing is not a separate “case.”

Contractor should report one assignment as one case. When Contractor believes that multiple charges from a single assignment should be counted as more than one case, Contractor must explain his/her basis for proposing that the case be so credited by submitting a written request and explanation to the Council. The Executive Director of the Council makes the final decisions regarding such requests.

A defendant facing one set of charges who is later arrested on charges completely unrelated to the first set of charges has two cases even if all charges are resolved in a consolidated fashion.



### **“Others”**

A case in the “other” category includes matters that are assigned by a court pursuant to RSA 604-A via an appointment of counsel form and matters where no new appointment of counsel form is generated but to which Contractor is entitled to payment under this Agreement. For specific examples of “others” seen on a regular basis, see Appendix C. The parties acknowledge that there may be situations that are not listed in the Appendix C to which Contractor is entitled to payment. If a court appoints counsel pursuant to RSA 604-A Contractor is always entitled to payment. If representation is for an event not listed in Appendix C and no new appointment is generated, it is presumed that no payment shall be made. The decision as to whether there should be entitlement to payment shall be at the sole discretion of the Executive Director of the Judicial Council.

When an “other” is assigned pursuant to RSA 604-A and an appointment of counsel form has been generated, Contractor shall report the case on their regular monthly report in the same manner as reporting of felony and misdemeanor cases. In matters when the court does not generate a new appointment, and when it is clear to Contractor that a new appointment is required, (See Appendix C), Contractor shall endeavor to get the court to issue an appointment of counsel form. If the court refuses, Contractor shall so notify the Executive Director.

When an “other” is assigned without a new appointment of counsel form, Contractor shall report the case on the monthly report in the first month after representation has been provided. The report shall include a copy of the Notice of Hearing or the applicable document, (see Appendix C) for that “other.” Failure to submit the case status report and the applicable supporting documentation in the month following the event will result in a waiver by the Contractor of the right to seek reimbursement for the event at anytime in the future. In no case will the Council pay for an “other” submitted more than 60 days after the representation has been provided.

For the purposes of this contract, Specialty Court appearances are established as a separate category within the “other case types” and will be compensated at a distinct unit value per court appearance.

## Appendix C: “OTHERS” IN THE NEW HAMPSHIRE INDIGENT DEFENSE SYSTEM

Version May 2015

The NH Judicial Council produces this chart to provide guidance about the Council’s position on when appointed counsel generally can expect case credit or additional compensation for certain routine “other” proceedings that are related to an original appointed case.

The Judicial Council considers these proceedings to be part of the original case; accordingly, no new appointment-of-counsel form is required from the Court:		The Judicial Council does not consider these matters to be part of the original case. The award of credit must be based on a new appointment-of-counsel form, (an “NEA”), issued by the Court:		
Appointed counsel is expected to provide representation on these matters as part of the original case. No additional case credit is warranted.	Appointed counsel should provide representation in these matters and is eligible for the award of case credit upon submission of a court order or hearing notice to the Judicial Council	N.H. recognizes a right to appointed counsel in these matters. The Court should issue a new appointment-of-counsel form for each.	Counsel has no contractual duty to assist a defendant in these matters. Case law gives courts discretion to appoint counsel if justice or judicial economy so require.	Counsel has no contractual duty to assist the defendant.  The courts rarely, if ever, appoint counsel in these matters.
Motion for credit for time served	The preparation of a Notice of Appeal	Contempt hearings	Motion to suspend or otherwise reduce a sentence	Annulment proceedings
Submission of progress reports, no hearing required	Submission of progress reports, hearing required	Violations of Conditional Release in juvenile cases	Motion for Administrative Home Confinement	<b>Duration of Appointment</b> RSA 604-A:3 requires appointed counsel to provide representation from “initial appearance before the court at every stage of the proceedings until the entry of final judgment.”  <b>Withdrawal</b> Court rules define when counsel is “deemed withdrawn” after the conclusion of a case: Family Division Rule 3.11 District Division Rule 1.3 Superior Court Rule 14
Motion to clarify an aspect of a sentence or order	Hearings held to review cases continued-to-be-dismissed or placed on file without finding	Motion to extend jurisdiction in a delinquency case	Habeas Corpus proceedings, and other post-conviction extraordinary writs	
Motion to amend a technical aspect of a sentence	Juvenile drug court sessions	The State’s motion to bring forward a charge or sentence	Motion to withdraw a guilty plea or motion for new trial	
Motion to vacate the conviction contemplated by original sentencing order	Juvenile Reviews (Family Division Rule 3.11 governs the duration of appointment)	The State’s motion to impose a suspended sentence	Hearings on defendant’s violation of a court order	
Hearings or a motion to calculate restitution	The defendant’s motion to suspend a deferred sentence	Misdemeanor Appeals	Hearings on defendant’s failure to pay fines	
Habeas Corpus proceedings conducted pre-conviction	The State’s motion to impose a deferred sentence	Parole violations	Hearings on defendant’s failure to pay restitution	
A motion to return property filed before counsel has closed the case or been deemed withdrawn by court rule	Adult mental health court and adult drug court sessions	Probation violations	Motion for work release	
		Sentence Review Board proceedings	Motion to terminate probation	

## Appendix D - EXTRAORDINARY CASE GUIDELINES

I. The presence of D below and any one (1) of A, B, or C shall be sufficient to initiate Judicial Council review of a case for award of extraordinary case units upon petition of contractor:

- A. Class A felony;
- B. Class B felony with bodily injury;
- C. Pre-trial motion hearings in excess of one (1) full in-court day;
- D. Out-of-court attorney time in excess of twenty-five (25) hours.

II. The presence of the following factor alone shall be sufficient to initiate Judicial Council review of a case for award of extraordinary case units upon petition of Contractor: Trial in excess of three (3) full in-court days from opening statement until conclusion of closing argument, plus twenty-five (25) hours of out-of-court attorney time.

III. Contractor may request that the Judicial Council initiate a review of a case for award of extraordinary case units, which does not meet the criteria set forth in paragraphs I or II above. In determining whether or not to initiate such a review, the Council will consider, inter alia:

- A. The category of case, i.e., felony, misdemeanor, misdemeanor appeal, juvenile or other;
- B. The number and severity of charges in the case;
- C. Total attorney time spent on the case, both in-court and out-of-court;
- D. Complexity of legal issues in relation to those generally found in this case category;
- E. Number of court appearances made by the contractor;
- F. Number and type of motions filed;
- G. Number of witnesses called by the parties;
- H. Nature and extent of investigation done.

When seeking a review under this section, contractor shall submit a written summary describing the case and setting forth in detail the reasons that review should be granted. Such summary shall include a detailed description of all items in A – H above as well as any other factors that contractor seems relevant for the Council's full consideration of the case for review.

IV. Upon request by contractor, review shall be granted automatically to cases meeting minimum criteria under paragraphs I and II. Review shall be granted at the discretion of the Judicial Council under paragraph III after evaluating the written summary submitted by the contractor. Once review has been granted under paragraphs I and II or III, the Judicial Council shall apply the following criteria to determine the number of extraordinary case units to be awarded to contractor:

- A. The seriousness of the charge or charges;
- B. Complexity of legal and factual issues;
- C. Number and complexity of pre-trial motions files;
- D. Number of in-court days for pre-trial issues and for trial.
- E. Total number of attorney hours spent on the case.

V. No case may be submitted for review for award of extraordinary credit more than 60 days after the close of the case.

One full in-court day is the equivalent of 6 hours.

SCHEDULE OF ADDITIONAL UNITS FOR CASES  
CERTIFIED FOR EXTRAORDINARY CASE REVIEW

Total Attorney Hours	Additional Units
Fewer than 25	Review under Paragraph III only
25-50	1-8
51-70	7-12
71-90	11-15
91-110	14-19
111-150	18-23
131-150	22-26
Over 150	At the discretion of the Judicial Council

Determination as to the number of units to be awarded within the published ranges shall be based upon application of the factors set forth in Paragraph IV.